IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

NO. ———. ORIGINAL.

STATE OF MISSOURI, Complainant,

vs.

STATE OF NEBRASKA, Defendant.

BRIEF.

After the pleadings were made up in this case and the commissioners appointed, the testimony was taken and a report made. In this report the Commission transmitted to the Court a complete copy of the testimony, and also, after argument of counsel on both sides, made the finding of fact embodied in the report and referred to in the stipulation hereinbefore filed.

We preserve no exceptions to the finding of the Commission upon questions of fact, but rely solely upon the legal proposition that the western boundary of Missouri, north of the mouth of the Kaw river, under the Act of Congress annexing Platte's Purchase to Missouri, was intended to be the Missouri river, wherever the same might run. We, therefore, submit but one exception to the Court for its determination.

EXCEPTION.

Complainant excepts to the action of the Commissioners in refusing to recognize the legality of complainant's prayer, as follows:

"Complainant prays the Commission to find that during the month of July, 1867, the Missouri river, at the point in controversy, suddenly changed its thread and course from its former channel, as shown by complainant's Exhibit B, and that since said change in July, 1867, said river has followed its present channel with no material variations; and that the Commissioners make no further finding of fact, for the reason that the Act of Congress, approved June 7, 1836, annexing Platte's Purchase to the jurisdiction of Missouri, established the thread of the middle channel of said river as it then ran or at any time in the future might run as the boundary line between said states."

The Commissioners refused this request, because they deemed it to be a question of law, and, therefore, declined to pass upon it, leaving it for the determination of the Court.

THE CENTRAL CHANNEL OF MISSOURI RIVER WHEREVER IT MAY AT ANY TIME RUN IS THE BOUNDARY LINE BETWEEN MISSOURI AND NEBRASKA.

The only question here involved, as above stated, is one of law. The contention of Missouri is that the central thread of the middle channel of the Missouri river is the dividing line between the states in question, and that this central thread constitutes at all times the proper line of division regardless of where it may run or be located.

The Act of Congress, annexing Platte's Purchase to the jurisdiction of Missouri, construed in a practical way and in conformity with the legislative memorial of Missouri, approved June 15, 1831, unquestionably fixes the Missouri river as the boundary and brands it as the perpetual and natural monument without further description or further evidence.

There can be no question but that the Missouri river was designated as a natural monument by both the act of annexation

and the memorial requesting the same. Being a natural monument, it must stand as ordained, for natural monuments are objects permanent in character, if they are found upon land as they were placed by nature, such as streams, lakes and ponds.

Washburn's Real Property, 5th Edition, Volume III, page 435.

Teideman on Real Property, 2nd Ed., Sec. 831.

Where a river is made the boundary between jurisdictions, the middle of the river is considered the point or line of demarkation, or, in other words, the term "river" when used to designate a boundary between two jurisdictions, means, in law, the middle of the river.

Stanford vs. Manin et al., 30 Ga., 355.

Hicks vs. Coleman, 85 Am. Dec., 103.

Lowell vs. Robinson, 33 Am. Dec., 673.

Hardin vs. Jordan, 140 U. S., 380.

It is not the meander line formed by what may be termed the water's margin, but the waters themselves which constitute the real boundary.

Railroad Company vs. Schurmer, 7 Wall., 272.

Hardin vs. Jordan, 140 U. S., 380.

Jeffries vs. East Omaha Land Co., 134 U. S., 178.

Houck vs. Yates, 82 Ills., 179.

Fuller vs. Dauphin, 124 Ills., 542.

St. Louis Bridge Co. vs. People, ex rel., 125 Ills., 228.

Butterworth vs. St. Louis Bridge Co., 123 Ills., 535.

It has been said that a river is composed of the bed, banks and stream.

Eastman vs. Water Company, 43 Minn., 60.

The foregoing declaration, however, is not an exact statement of the true meaning of the term. A more apt way of putting

it is that a river is composed of a stream of constantly and continuously flowing water, through a natural drainage basin, with the bed and banks as essential incidents to it. It is not the bed and banks which constitute the river, but the natural stream of water. When observed from the standpoint of the reason upon which the legislature of Missouri memorialized Congress to annex Platte's Purchase to Missouri and the Act of Congress annexing the same, no other conclusion can be reached but that it was intended to make the stream the boundary line wherever that stream might at any time run.

The channel is the passage way between the banks through which the water of the stream flows.

Benjamin vs. River Improvement Company, 42 Mich., 628.

The term "natural channel" includes not only all channels through which in the existing conditions of the country water naturally flows, but new channels through which it might afterwards flow.

Larrabe vs. Cloverdale, 131 Calif., 96.

The rule is settled that meander lines are not intended as boundaries, but that the body of the water will be regarded as the true boundary.

Jeffries vs. East Omaha Land Co., 134 U. S., 178.
Mitchell vs. Smith, 140 U. S., 406.
Hardin vs. Jordan, 140 U. S., 371.
Clute vs. Fisher, 65 Mich., 48.
Norwood vs. Smith, 59 Wis., 344.

In this connection, we are not unmindful of the fact that this court has decided in certain instances that if a boundary river leaves its old channel and forms a new one, within the limits of either of the states which border on it, the old channel will remain the boundry.

Indiana vs. Kentucky, 136 U. S., 479.
Missouri vs. Kentucky, 11 Wall., 395.
Nebraska vs. Iowa, 143 U. S., 359.

Our contention, however, is that the decisions of this court in the above cited cases do not control for the reason that different principles are involved, and the same state of facts does not pertain. In the case at bar, that territory known as Platte's Purchase, was annexed to the State of Missouri by reason of a memorial coming from its legislative department in 1831, wherein certain important and substantial reasons were set out why the Missouri River, north of the mouth of the Kaw, should be fixed forever as an absolute boundary of Missouri, and soon after this memorial was presented to Congress the territory in question was annexed to the jurisdiction of the State. There can be no question but that Congress had authority to annex the territory in the manner herein described. There can be no question but that it was the intention of the legislature of Missouri to make the request in the manner herein presented, because it was so shown clearly from the resoultion. It is a matter of no importance whether or not the same conditions exist today as existed then. The question for determination is, what was the intention of Congress at the time of the annexation of Platte's Purchase to Missouri?

If it can be observed from the annexation statute construing it in the light of the memorial, that the plain intention of Congress was to make the Missouri River wherever it might run the absolute boundary of the state, it matters not whether those conditions still exist which were considered in the memorial, and which authorized, warranted and induced the Federal Congress to so ordain. The conditions which moved Congress to enact the statute may have passed away. That, however, does not release the State of Missouri of the right to demand a strict compliance with the original grant as it was intended by the Federal Government at the time it was made.

Missouri was admitted into the Union in 1820, long prior to the admission of Nebraska and during a time when all the territory immediately west of the Missouri River belonged to the Federal Government. At the time of its admission there

was no practical assurance that the territory now known as Nebraska would ever be admitted into the Union. It belonged to the Federal Government to be disposed of at will, to be held as a territory or afterwards subdivided and admitted into the Union as a state.

It is our contention, therefore, that by accepting the terms of the memorial annexing Platte's Purchase to the State of Missouri, the Federal Government made an absolute guarantee to the people of Missouri that the stream of water flowing from the Rockies, known as the Missouri River, should forever be its absolute boundary line.

Construed in the light of the memorial and according to the plain words of the statute of annexation, Missouri now claims that fixed and vested rights were obtained thereunder, and that she is entitled to complete jurisdiction and sovereignty over all the territory lying east of the Missouri River as hereinbefore stated, and that it was more important at the time of the annexation that this river be made the absolute boundary for all time to come than to afterwards have such boundary changed by reason of sudden variation in the channel of the river. Indeed, had the fact in question been raised long prior to the admission of Nebraska into the Union, and after the annexation statute had been approved, no one would have questioned the right of Missouri to claim and obtain absolute sovereignty over the territory here involved. This principle is made manifest by reason of the terms of the statute construed in the light of the memorial and it fixes a vested privilege and right in the State of Missouri regardless of what might afterwards have been done by the Federal Congress without the consent of this complainant.

"The right and duties with respect to waters depends primarily upon the relations which the opposing parties bear towards each other."

This is the language of Farnham on Waters and Water Rights, page 3.

In this controversy, there is no agreement or contractual relations existing between the State of Nebraska and the State of Missouri, so far as the boundary line between the two states is concerned. Both states derive their power and rights in the premises from the Federal Government and Missouri, prior to

the admission of Nebraska, being granted and delegated with sovereignty and power over the territory known as Platte's Purchase, and the Missouri River being at the time fixed as the absolute boundary line, is asking that the terms of the grant annexing the northwestern territory to it be strictly carried out. Congress unquestionably had authority to fix the Missouri River as it then and as it might subsequently run as the western boundary. When Nebraska was admitted into the Union, it came with both actual and constructive notice that its jurisdiction could never extend to the east of the Missouri River south of the boundary line between Iowa and Missouri.

We, therefore, submit that the request made upon the commissioners by complainant above referred to, should have been by them granted and no other or further finding of fact should have been made.

Respectfully submitted,

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